

JOHN C. McGARVEY

v.

SUSAN L. McGARVEY

Submitted on Briefs September 27, 2017  
Decided October 5, 2017

Panel: SAUFLEY, C.J., and ALEXANDER, MEAD, GORMAN, JABAR, and HUMPHREY, JJ.

## MEMORANDUM OF DECISION

Susan L. McGarvey appeals from the judgment of the District Court (Portland, *J. French, J.*) denying her motion to set aside its order modifying the divorce judgment by awarding John C. McGarvey primary residence of the parties' daughter. Contrary to Susan's contention, the court did not abuse its discretion in finding that she was given adequate notice of the hearing on her motion to modify. In the absence of a transcript of the hearing, we assume that the transcript would support the trial court's findings of fact that (1) notice of the hearing was duly transmitted to Susan at the address she provided to the court (the same address where she had successfully received court notices in the past); and (2) her professed lack of notice of the hearing date was "simply not credible." *See Greateon v. Greateon*, 2012 ME 17, ¶ 2, 36 A.3d 913.

We deem as waived Susan's arguments that the court erred by incorrectly reciting the parties' son's birthday in its order and by incorrectly calculating her child support obligation. *See Brown v. Starks*, 2015 ME 47, ¶ 6, 114 A.3d 1003 ("[T]o preserve an issue for appeal, a party must timely

present that issue to the original tribunal. . . .”). Neither of these issues are relevant to the issue of notice of the hearing on the motion to modify, nor were they raised below.

Lastly, we conclude that the record here was adequate for review of Susan’s claimed lack of notice; accordingly, we deny John’s request for costs and attorney fees. *Greaton*, 2012 ME 17, ¶¶ 2, 8, 36 A.3d 913.

The entry is:

Judgment affirmed.

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Susan L. McGarvey, appellant pro se

David S. Turesky, Esq., Portland, for appellee John C. McGarvey

Portland District Court docket number FM-2005-1035  
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